

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 479 of 1994

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1.MER MANIBEN SIDIBHAI & 2 OTHERS

Versus

1.MER VIKRAM SAJAN & 1 ANOTHER

Appearance:

MR RC KAKKAD for Petitioners
MR YS LAKHANI for Respondent No. 1
MR ST MEHTA Addl. PP for the State.

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 07/02/97

ORAL JUDGEMENT

The short question that arises in this petition is whether the maintenance awarded to the petitioners under section 125 of the Criminal Procedure Code, 1973 shall be awarded from the date of the application or from the date of the order.

2. Petitioner No.1 was being ill treated by respondent No. 1. On 5th August, 1987, petitioner No.1

was driven out of her matrimonial home and she, therefore, went to her parents at Ranavav. On the next day i.e. 6th August, 1987, respondent No.1, his brother and few others went to Ranavav and informed the petitioner No. 1 and her parents that respondent No. 1 was not ready and willing to accept petitioner No. 1 and to cohabit with her. He, however, agreed to pay maintenance to the petitioners. An agreement was drawn on the same day and under the said agreement, respondent No. 1 agreed to pay Rs. 600/every month to the petitioners by way of maintenance. Respondent No. 1 paid the maintenance for three months and, thereafter, stopped paying the said amount of maintenance. Petitioners were, therefore, constrained to file application under section 125 of the Criminal Procedure Code for maintenance from respondent No. 1. Said application being Criminal Miscellaneous Application No. 586 of 1987 was presented before the Court of 30th November, 1987. Said application was finally allowed by the learned Judicial Magistrate, First Class, Porbandar under his judgment and order dated 31st March, 1993. Learned Magistrate awarded a sum of Rs. 600/- for maintenance of the petitioners. The Court, however, held that the petitioners had not claimed that such maintenance be awarded from the date of the application and, therefore, he directed that the amount of maintenance be paid to the petitioners from the date of the order.

3. Feeling aggrieved, the petitioners preferred Criminal Revision Application No. 11 of 1993 before the learned Sessions Judge, Porbandar who, under his judgment and order dated 8th December, 1993, has recorded that the delay in disposing of the application made under section 125 of the Code was caused to some extent for administrative reasons and also on account of respondent No. 1. It has been noted that respondent No. 1 did not remain present before the Court on several occasions. He examined himself on 29th November, 1991 and other witnesses in his support on 2nd January, 1993. However, the Court held that since the petitioner had not made a prayer that the amount of maintenance be paid from the date of the application, learned Magistrate had rightly made award effective from the date of the order. Feeling aggrieved, the petitioners have preferred this petition before this Court.

4. It is true that under section 125 (2) of the Code, maintenance would be payable from the date of the order. However, discretion has been conferred upon the trial Judge to make such maintenance payable from the

date of the application for maintenance. Thus, it is the discretion of the trial Judge to award maintenance either from the date of the application for maintenance or from the date of the order. However, such discretion is required to be exercised judiciously. In the present case, I am of the view that the Courts below have wrongly refused the maintenance from the date of the application on the ground that there was no such prayer. It is undisputed that respondent No. 1 was liable to pay maintenance to the petitioners since 6th August, 1987, the date of the agreement. However, he did not respect the said agreement and neglected to pay the maintenance. It was in the said circumstance that the petitioners had to make an application for maintenance. Respondent No. 1 has avoided to attend the proceedings before the learned Magistrate. Thus, substantial delay has been caused in disposing of the application under section 125 of the Code on account of respondent No. 1. The petitioners should not be made to suffer on account of such unsavoury behaviour of the respondent No.1. I, therefore, consider it fit to interfere with the orders of the Courts below and direct that the maintenance awarded to the petitioners herein by the learned Judicial Magistrate, First Class, Porbandar under his judgment and order dated 31st March, 1993 made on Criminal Miscellaneous Application No. 586 of 1987 shall be payable from the date of the application for maintenance. The judgment and order of the learned Additional Sessions Judge, Porbandar passed in Criminal Revision Application No. 11 of 1993 is quashed and set aside.

5. Petition is allowed accordingly. Rule is made absolute. Respondent No. 1 is directed to pay the arrears of maintenance as directed hereinabove within the period of three months from to day. Writ shall be sent forthwith.

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Vyas